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REFERENCE TITLE: **economic loss; restitution; definition**

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SB 1421

Introduced by
Senator Huppenthal

AN ACT

**AMENDING SECTIONS 8-382, 13-804 AND 13-4401, ARIZONA REVISED STATUTES;
RELATING TO ECONOMIC LOSS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to
3 read:

4 8-382. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accused" means a juvenile who is referred to juvenile court for
7 committing a delinquent act.

8 2. "Appellate proceeding" means a review of a lower court's decision
9 before the state court of appeals, the state supreme court, a federal court
10 of appeals or the United States supreme court.

11 3. "Arrest" means the actual custodial restraint or temporary custody
12 of a person.

13 4. "Court" means the juvenile division of the superior court when
14 exercising its jurisdiction over children in any proceeding relating to
15 delinquency.

16 5. "Crime victim advocate" means a person who is employed or
17 authorized by a public entity or a private entity that receives public
18 funding primarily to provide counseling, treatment or other supportive
19 assistance to crime victims.

20 6. "Custodial agency" means any law enforcement officer or agency, a
21 sheriff, a county juvenile detention center, the department of juvenile
22 corrections or a secure mental health facility that has custody of a person
23 who is arrested or in custody for a delinquent or incorrigible offense.

24 7. "Delinquency proceeding" means any hearing, argument or other
25 matter that is scheduled or held by a juvenile court judge, commissioner or
26 hearing officer ~~relating~~ AND THAT RELATES to an alleged or adjudicated
27 delinquent offense.

28 8. "Delinquent" means a child who is adjudicated to have committed a
29 delinquent act.

30 9. "Delinquent act" means an act to which this article applies
31 pursuant to section 8-381.

32 10. "Detention hearing" means the accused's initial appearance before
33 the court to determine release ~~prior to~~ BEFORE adjudication.

34 11. "ECONOMIC LOSS" MEANS ANY LOSS THAT IS INCURRED BY A PERSON AS A
35 RESULT OF THE COMMISSION OF AN OFFENSE. ECONOMIC LOSS INCLUDES LOST
36 INTEREST, LOST EARNINGS AND OTHER LOSSES THAT WOULD NOT HAVE BEEN INCURRED
37 BUT FOR THE OFFENSE. ECONOMIC LOSS DOES NOT INCLUDE LOSSES THAT ARE INCURRED
38 BY THE CONVICTED PERSON, DAMAGES FOR PAIN AND SUFFERING OR PUNITIVE DAMAGES
39 BUT DOES INCLUDE FUTURE LOST EARNINGS OF THE VICTIM.

40 ~~11.~~ 12. "Final disposition" means the ultimate termination of the
41 delinquency proceeding by a court, including dismissal, acquittal, transfer
42 to adult court or imposition of a disposition after an adjudication for a
43 delinquent offense.

44 ~~12.~~ 13. "Immediate family" means a victim's spouse, parent, child,
45 sibling, grandparent or lawful guardian.

~~13.~~ 14. "Juvenile defendant" means a juvenile against whom a petition is filed seeking to have the juvenile adjudicated delinquent.

~~14.~~ 15. "Lawful representative" means a person who is designated by the victim or appointed by the court and who will act in the best interests of the victim.

~~15.~~ 16. "Postadjudication release" means release on probation, intensive probation, work furlough, community supervision or home detention, release on conditional liberty pursuant to section 41-2818 by the department of juvenile corrections or any other permanent, conditional or temporary release from confinement, discharge or completion of commitment by the department of juvenile corrections, a sheriff, a municipal jail, a juvenile detention center, a residential treatment facility or a secure mental health facility.

~~16.~~ 17. "Postadjudication review hearing" means a hearing that is held in open court and that involves a request by the juvenile for review of a disposition.

~~17.~~ 18. "Postarrest release" means the discharge of the accused from confinement.

~~18.~~ 19. "Release" means no longer in the custody of the custodial agency and includes transfer from one custodial agency to another custodial agency.

~~19.~~ 20. "Rights" means any right granted to the victim by the laws of this state.

~~20.~~ 21. "Victim" means a person against whom the delinquent act was committed, or if the person is killed or incapacitated, the person's immediate family or other lawful representative, except if the person is in custody for an offense or is the accused.

Sec. 2. Section 13-804, Arizona Revised Statutes, is amended to read:

13-804. Restitution for offense causing economic loss; fine for reimbursement of public monies; definition

A. ~~Upon~~ ON a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

B. In ordering restitution for economic loss pursuant to section 13-603, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

C. The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.

D. Restitution payments that are ordered pursuant to section 13-603 and this section shall not be stayed if the defendant files a notice of appeal. ~~, and~~ The COURT MAY HOLD THE payments ~~may be held by the court~~ pending the outcome of an appeal.

1 E. After the court determines the amount of restitution, the court or
2 a staff member designated by the court, including a probation officer, shall
3 specify the manner in which the restitution is to be paid. In deciding the
4 manner in which the restitution is to be paid, the court or a staff member
5 designated by the court, including a probation officer, shall make reasonable
6 efforts to contact any victim who has requested notice pursuant to sections
7 13-4415 and 13-4417, shall take into account the views of the victim and
8 shall consider the economic circumstances of the defendant. In considering
9 the economic circumstances of the defendant, the court shall consider all of
10 the defendant's assets and income, including workers' compensation and social
11 security benefits. The court shall make all reasonable efforts to ensure
12 that all persons WHO ARE entitled to restitution pursuant to a court order
13 promptly receive full restitution. The court may enter any reasonable order
14 necessary to accomplish this. If a victim has received reimbursement for the
15 victim's economic loss from an insurance company, a crime victim compensation
16 program funded pursuant to section 41-2407 or any other entity, the court
17 shall order the defendant to pay the restitution to that entity. If a victim
18 has received only partial reimbursement for the victim's economic loss, the
19 court shall order the defendant to pay restitution first to the victim and
20 then to the entity that partially reimbursed the victim. If a probation,
21 parole or community supervision officer has reason to believe that court
22 ordered restitution is not being made, the officer shall report to the court
23 supervising the probationer or the board of executive clemency that the
24 defendant has failed to make restitution in a timely manner and the court or
25 the board of executive clemency may revoke the defendant's probation, parole
26 or community supervision.

27 F. If more than one defendant is convicted of the offense which THAT
28 caused the loss, the defendants are jointly and severally liable for the
29 restitution.

30 G. If the court does not have sufficient evidence to support a finding
31 of the amount of restitution or the manner in which the restitution should be
32 paid, it may conduct a hearing upon ON the issue according to procedures
33 established by ~~rule of~~ court RULE. The court may call the defendant to
34 testify and to produce information or evidence. The state does not represent
35 persons who have suffered economic loss at the hearing but may present
36 evidence or information relevant to the issue of restitution.

37 H. After making the determinations in subsection B of this section the
38 trial court shall enter a restitution order for each defendant which THAT
39 sets forth all of the following:

- 40 1. The total amount of restitution the defendant owes all persons.
- 41 2. The total amount of restitution owed to each person.
- 42 3. The manner in which the restitution is to be paid.

43 I. The restitution order under subsection H of this section may be
44 supported by evidence or information introduced or submitted to the court
45 before sentencing or any evidence previously heard by the judge during the
46 proceedings.

J. A restitution lien shall be created in favor of the state for the total amount of the restitution, fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any.

K. Notwithstanding any other law, a restitution lien is created in favor of a victim of the defendant WHO IS ordered to make restitution. Monies received monthly from the defendant shall be applied first to satisfy the restitution order entered by the court and the payment of any restitution in arrears. Any monies that are owed by this state to a person who is under a restitution order shall be assigned first to discharge the restitution order, including any tax refund that is owed to the defendant.

L. If the defendant, the state or persons entitled to restitution pursuant to a court order disagree with the manner of payment established in subsection E of this section, the defendant, court or person entitled to restitution may petition the court at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the court shall give notice and an opportunity to be heard to the defendant, the state and, upon request, persons entitled to restitution pursuant to a court order.

M. FOR THE PURPOSES OF THIS SECTION AND SECTION 13-806, "ECONOMIC LOSS" MEANS ANY LOSS THAT IS INCURRED BY A PERSON AS A RESULT OF THE COMMISSION OF AN OFFENSE. ECONOMIC LOSS INCLUDES LOST INTEREST, LOST EARNINGS AND OTHER LOSSES THAT WOULD NOT HAVE BEEN INCURRED BUT FOR THE OFFENSE. ECONOMIC LOSS DOES NOT INCLUDE LOSSES THAT ARE INCURRED BY THE CONVICTED PERSON, DAMAGES FOR PAIN AND SUFFERING OR PUNITIVE DAMAGES BUT DOES INCLUDE FUTURE LOST EARNINGS OF THE VICTIM.

Sec. 3. Section 13-4401, Arizona Revised Statutes, is amended to read:

13-4401. Definitions

In this chapter, unless the context otherwise requires:

1. "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.

2. "Appellate proceeding" means a contested oral argument that is held in open court before the state court of appeals, the state supreme court, a federal court of appeals or the United States supreme court.

3. "Arrest" means the actual custodial restraint of a person or the person's submission to custody.

4. "Court" means all state, county and municipal courts in this state.

5. "Crime victim advocate" means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims.

6. "Criminal offense" means conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury or a sexual offense has occurred.

7. "Criminal proceeding" means any hearing, argument or other matter that is scheduled by and held before a trial court but does not include any deposition, lineup, grand jury proceeding or other matter that is not held in the presence of the court.

8. "Custodial agency" means any law enforcement officer or agency, a sheriff or municipal jailer, the state department of corrections or a secure mental health facility that has custody of a person who is arrested or in custody for a criminal offense.

9. "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.

10. "ECONOMIC LOSS" MEANS ANY LOSS THAT IS INCURRED BY A PERSON AS A RESULT OF THE COMMISSION OF AN OFFENSE. ECONOMIC LOSS INCLUDES LOST INTEREST, LOST EARNINGS AND OTHER LOSSES THAT WOULD NOT HAVE BEEN INCURRED BUT FOR THE OFFENSE. ECONOMIC LOSS DOES NOT INCLUDE LOSSES THAT ARE INCURRED BY THE CONVICTED PERSON, DAMAGES FOR PAIN AND SUFFERING OR PUNITIVE DAMAGES BUT DOES INCLUDE FUTURE LOST EARNINGS OF THE VICTIM.

~~10.~~ 11. "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.

~~11.~~ 12. "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful guardian.

~~12.~~ 13. "Lawful representative" means a person who is designated by the victim or appointed by the court and who acts in the best interests of the victim.

~~13.~~ 14. "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.

~~14.~~ 15. "Post-conviction release" means parole, work furlough, community supervision, probation if the court waived community supervision pursuant to section 13-603, home arrest or any other permanent, conditional or temporary discharge from confinement in the custody of the state department of corrections or a sheriff or from confinement in a municipal jail or a secure mental health facility.

~~15.~~ 16. "Post-conviction relief proceeding" means a contested argument or evidentiary hearing that is held in open court and that involves a request for relief from a conviction or sentence.

~~16.~~ 17. "Prisoner" means a person who has been convicted of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the state department of corrections, a municipal jail or a secure mental health facility.

~~17.~~ 18. "Release" means no longer in the custody of a custodial agency and includes transfer from one custodial agency to another custodial agency.

~~18.~~ 19. "Rights" means any right that is granted to the victim by the laws of this state.

~~19.~~ 20. "Victim" means a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the person's

1 immediate family or other lawful representative, except if the person is in
2 custody for an offense or is the accused."